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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BERNICE RAULLERSON,)
)
Plaintiff,)
)
v.)
)
CITY OF EL CAJON, GREG JOHNSON,)
JOHN BENNETT and DOES I through)
XX, inclusive,)
Defendants.)

Case No. 07 CV 2001 W (AJB)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS' 1) MOTION FOR A
MORE DEFINITE STATEMENT 2)
MOTION TO DISMISS FOR FAILURE
TO STATE A CLAIM AND 3) MOTION
TO STRIKE IRRELEVANT,
IMPROPER AND IMMATERIAL
PORTIONS OF THE COMPLAINT**

Date: January 14, 2008
Time: 10:30 a.m.

NO ORAL ARGUMENT PURSUANT TO
LOCAL RULE: 7.1D1

Defendants, CITY OF EL CAJON, GREG JOHNSON and JOHN BENNETT,
respectfully submit the following points and authorities in support of their motion for more
definite statement, motion dismiss the complaint and motion to strike irrelevant, improper and
immaterial portions of the complaint:

I.

PLAINTIFF'S ALLEGATIONS

Plaintiff alleges that on or about October 25, 2006, El Cajon police officers, GREG
JOHNSON and JOHN BENNETT contacted plaintiff at 5316 Meade Avenue, Apt. 29 in San
Diego. (Complt. at 3:4-6.) Plaintiff alleges that GREG JOHNSON and JOHN BENNETT

unnecessarily, unlawfully, negligently and carelessly used excessive force upon plaintiff causing serious and permanent injuries to plaintiff while purportedly attempting to execute a search warrant at her address which was intended to be served on the apartment next door. (Complt. at 3:9-13.)

In the first cause of action, plaintiff alleges that all defendants were negligent and breached their duty of due care owed to plaintiff. (Complt. at 3:16-17.) In the second cause of action, plaintiff alleges JOHNSON and BENNETT assaulted and battered plaintiff. (Complt. at 4:19-22.). In the third cause of action, plaintiff alleges defendants falsely arrested and imprisoned plaintiff in that plaintiff was arrested without a warrant and without reasonable or probable cause which constituted an unlawful seizure in violation of the Fourth Amendment to the United States Constitution entitling plaintiff to damages pursuant to Title 42 U.S.C. § 1983 et seq. (Complt. at 5:10-15.)

Plaintiff alleges that the conduct of defendants, and each of them, was taken with fraud, malice and oppression and plaintiff is entitled to an award of exemplary damages. (Complt. at 7:14-16.) Plaintiff prays for punitive damages against each defendant according to proof. (Complaint at 8:3-22.)

II.

AUTHORITY

A. PLAINTIFF'S ENTIRE COMPLAINT SHOULD BE DISMISSED, OR PLAINTIFF SHOULD BE REQUIRED TO PREPARE A MORE DEFINITE STATEMENT, AS PLAINTIFF'S PLEADING IS VAGUE AND AMBIGUOUS

Rule 12(e) of the Federal Rules of Civil Procedure permits a party to "move for a more definite statement" if an answer to the pleading is precluded by vagueness or ambiguity. (Fed. R.Civ. Proc. 12(e).)

At a minimum, the foregoing requires identifying which defendants are allegedly responsible under different legal theories arising from different actions. Plaintiff fails to set forth which causes of action are being brought against which defendant. As such, plaintiff should be required to set forth what legal theories are being brought against each defendant.

B. PLAINTIFF'S THE FIRST, SECOND AND THIRD CAUSES OF ACTION SHOULD BE DISMISSED PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE, RULE 12(b)(6) BECAUSE PLAINTIFF HAS FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

A complaint may be dismissed pursuant to Rule 12(b)(6) where the complaint either asserts a legal theory that is not cognizable as a matter of law or fails to allege facts to sufficiently support a cognizable legal claim. (*SmileCare Dental Group v. Delta Dental Plan of Cal., Inc.*, 88 F.3d 780, 783 (9th Cir. 1996).) A court should not dismiss a complaint, however, for a party's failure to state a claim "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of [its] claim which would entitle [it] to relief." (*Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L. Ed. 2d 80, (1957); see also *Yamaguchi v. United States Dep't of the Air Force*, 109 F.3d 1475, 1481 (9th Cir. 1997).) In deciding a motion to dismiss, the court should take all allegations of material fact in the complaint as true and construed in the light most favorable to the plaintiff. (*North Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 580 (9th Cir. 1983).)

To the extent that plaintiff has pled the state law causes of action against all defendants, including the City, the City cannot be held liable on the state law causes of action based on negligence, assault and battery and false arrest.

All tort liability of any public agency is statutory. (Cal. Gov. Code § 815.) In California, "public entities may be held liable only if a statute is found declaring them to be liable." (*Id.*, *Van Ort v. Estate of Stanewich*, 92 F.3d 831, 840.) This principle is both elementary and firmly grounded in California case law. (See, e.g., *Peterson v. San Francisco Community College District* 36 Cal.3d 799, 809 (1984); *Chester v. State* 21 Cal.App.4th 1002, 1004 (1994); *Lompac Unified School District v. Superior Court*, 20 Cal.App.4th 1688, 1695 (1994); *Gonzales v. State* 29 Cal.App.3d 585, 590 (1972); *Virgil Cowing v. City of Torrence* 60 Cal.App.3d 757, 761 (1976); *Adkins v. The State of California* (1996) 50 Cal. App. 4th 1802, 1818; citing, *Michael J. v. Los Angeles County Dept. of Adoptions* (1988) 201 Cal. App. 3d 859, 866 and Cal. Gov. Code, § 815).

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1 As stated in *Cochran v. Herzog Engraving Company*, 155 Cal.App.3d 405 (1984):

2 Government Code section 815, enacted in 1963, abolished all
3 common law or judicially declared forms of liability for public
4 entities, except for such liability as may be required by the federal
5 or state Constitution. Thus, in the absence of some constitutional
6 requirement, public entities may be liable *only* if a statute declares
7 them to be liable.

8 (*Cochran*, 155 Cal.App. 3d at 409; *see also Harshbarger v. City of Colton*, 197 Cal.App.3d
9 1335, 1339, 243 Cal. Rptr. 463 (4th Dist. 1988).)

10 The California Supreme Court has consistently recognized that the intent of the Tort
11 Claims Act is to limit public entity liability. Immunity is the rule and liability the exception.

12 The intent of the [Tort Claims Act] is not to expand the rights of
13 plaintiffs in suits against governmental entities, but to confine
14 potential governmental liability to rigidly delineated
15 circumstances: immunity is waived only if various requirements of
16 the act are satisfied.

17 (*Brown v. Poway Unified School Dist.*, 4 Cal.4th 820, 829 (1993); *accord Teter v. City of*
18 *Newport Beach*, 30 Cal.4th 446, 451 (2003); *Zelig v. County of Los Angeles*, 27 Cal.4th 1112,
19 1127-1128 (2002).)

20 Plaintiff's state law causes of action to the extent they are alleged directly against the
21 City, must identify a statutory basis for liability in order to establish a valid cause of action
22 against the City. There is no statutory basis for negligence, assault and battery or false arrest
23 against the City. Therefore, these causes of action should be dismissed as to the City.

24 To the extent the third cause of action for false arrest is alleged against the City under
25 section 1983, it should be dismissed because plaintiff has failed to allege that the City maintained
26 unconstitutional policies or customs or inadequate training led to the alleged constitutional
27 violation.

28 The United States Supreme Court has consistently refused to hold municipalities liable
under a theory of respondeat superior. (See *Oklahoma City v. Tuttle*, 471 U.S. 808, 818, 105 S.
Ct. 2427 (1985); *Pembaur*, 475 U.S. at 478-479; *St. Louis v. Praprotnik*, 485 U.S. 112, 122, 108
S. Ct. 915 (1988); *Canton v. Harris*, 489 U.S. 378, 392, 103 L. Ed. 2d 412, 109 S. Ct. 1197
(1989). Instead, in *Monell* and subsequent cases, the Court has required a plaintiff seeking to

1 impose liability on a municipality under § 1983 to identify a municipal "policy" or "custom" that
 2 caused the plaintiff's injury, or a failure to train. (See *Monell*, 436 U.S. at 694; *Pembaur*, 475
 3 U.S. at 480-481; *Canton*, 489 U.S. at 389.)

4 Therefore, because the state law causes of action attempt to hold the City directly liable
 5 and are not based upon statute, they cannot lie against the City and must be dismissed and the
 6 third cause of action fails to alleges facts sufficient to hold the City liable under section 1983.

7 **C. THE COMPLAINT CONTAINS MATTERS THAT ARE IMPROPER AND MUST**
 8 **BE STRICKEN PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE,**
 9 **RULE 12(f)**

10 Under Federal Rules of Civil Procedure, Rule 12(f), a party is permitted to attack defects
 11 in pleadings or to lodge objections to pleadings not otherwise subject to attack under a motion to
 12 dismiss. As such, a Rule 12(f) motion to strike typically attacks portions of pleadings—i.e.,
 13 words and phrases. (*Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir.), *rev'd on other*
grounds, 510 U.S. 517 (1994).)

14 A motion to strike is warranted when the pleading contains irrelevant or immaterial
 15 matters. A motion to strike should be granted where “it is clear that the matter to be stricken
 16 could have no possible bearing on the subject matter of the litigation.” (*LeDuc v. Kentucky*
 17 *Central Life Ins. Co.*, 814 F.Supp.820, 830 (N.D.Cal. 1992).)

18 Plaintiff requests punitive damages against the City. However, pursuant to Government
 19 Code section 818, “a public entity is not liable for damages awarded under Section 3294 of the
 20 Civil Code or other damages imposed primarily for the sake of example and by way of punishing
 21 the defendant.” (See, *McAllister v. South Coast Air Quality Etc. Dist.*, (1986) 183 Cal.App.3d
 22 653 (upholding Government Code section 818). Therefore, plaintiff cannot seek such damages
 23 against the City.

24 Plaintiff's complaint contains requests for punitive damages against the City. Because a
 25 public entity cannot be held liable for punitive damages, the requests and prayer for punitive
 26 damages must be stricken.

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28 ///


III.

CONCLUSION

For the foregoing reasons, the defendants request that the court dismiss the state law causes of action against the City, require plaintiff to provide a more definite statement, and strike the request for punitive damages against the City.

DATED: November 19, 2007

**McDOUGAL, LOVE, ECKIS,
SMITH, BOEHMER & FOLEY**

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